

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

New claims 29-32 are being added.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-32 are now pending in this application. Claims 17 and 18 have been withdrawn from consideration.

Notice of Non-Compliant Amendment

Applicant respectfully submits that claims have been provided with proper status identifiers and respectfully requests consideration of the claim amendments and remarks provided herein.

Interview Summary

Applicant's representative wishes to thank the Examiner for conducting the interview of June 30, 2009. In accordance with the request in the Interview Summary that the Applicant file a statement of substance of the interview, please be advised that the Interview Summary accurately summarizes the interview.

Rejections under 35 U.S.C. § 112

Claims 2, 3, and 12 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Applicant respectfully submits that the amendments to the claims render these rejections moot. Reconsideration and withdrawal of these rejections is respectfully requested.

Rejection under 35 U.S.C. § 102

Claims 1, 2, 13, 15, 16, and 19-28 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,021,059 to Kensey *et al.* (hereafter “Kensey”). This rejection is respectfully traversed.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See generally MPEP § 2131.

Kensey discloses a closure instrument 20 with a plunger actuator 34 that is slid forward when a cap 60 is depressed, causing a pusher rod 36 to push an anchor member 202 through an outlet gate 52 of the closure instrument 20 and into an interior of an artery. See Kensey at col. 9, lines 41-64, and Figures 1-5. Upon deployment of the anchor member 202 into the artery, which is signaled to an operator by an audible “click,” the operator releases the cap 60, causing the plunger actuator 34 and pusher rod 36 to retract in a proximal direction. See Kensey at col. 9, lines 65-68, and Figure 6. The user then pulls the entire instrument 20 in a proximal direction away from the artery to cause the anchor member 202 to engage the interior of the artery and pull on a filament connecting the anchor member 202 to a plug component 204, which in turn causes the plug component 204 to be pulled out of the closure instrument 20 to seal an incision or puncture of the artery. See Kensey at col. 10, lines 16-59, and Figure 7.

Kensey does not disclose a closure device comprising, among other things, an actuator configured for tamping an outer member on an outside of a vessel, as recited in claims 1 and 22. Claims 2, 13, 15, 16, 19-21, and 28 depend from claim 1. Claims 23-27 depend from claim 22. The closure device 20 of Kensey is pulled away from an artery and the closure device is not configured for tamping of an outer member on an outside of a vessel. Therefore, Kensey does not anticipate claims 1, 2, 13, 15, 16, and 19-28 because Kensey does not disclose all of the features of claims 1 and 22, as indicated in the Interview Summary.

For at least the reasons discussed above, reconsideration and withdrawal of this rejection is respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 3-5, 12, and 14 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kensey in view of U.S. Patent No. 5,545,178 to Kensey *et al.* (hereafter “Kensey ‘178”). This rejection is respectfully traversed. Kensey ‘178 fails to remedy the deficiencies of Kensey discussed above in regard to independent claim 1, from which claims 3-5, 12, and 14 depend. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 10 and 11 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kensey in view of U.S. Pub. No. 2001/0003158 to Kensey *et al.* (hereafter “Kensey ‘158”). This rejection is respectfully traversed. Kensey ‘158 fails to remedy the deficiencies of Kensey discussed above in regard to independent claim 1, from which claims 10 and 11 depend. Reconsideration and withdrawal of this rejection is respectfully requested.

New Claims

Claims 29-32 have been added. Claims 29 and 30 depend from claim 1 and claims 31 and 32 depend from claim 22. Claims 29-32 are allowable over the prior art for at least the reasons discussed above and for their respective additional recitations.

Conclusion

Applicant submits that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a

check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

NOV 20 2009

Date _____

By  _____

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 295-4011
Facsimile: (202) 672-5399

Glenn Law
Attorney for Applicant
Registration No. 34,371

Kevin McHenry
Attorney for Applicant
Registration No. 62,582